IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

WP(C).No. 31427 of 2006(N)

PETITIONER:

BHASKARAN, S/O.LATE ACHUTHAN,
THAIKKUDIYIL HOUSE, PANANKARA,
KADAVOOR, ERNAKULAM DISTRICT.

BY ADV. SRI.P.V.BABY
SRI.R.KIRAN

RESPONDENTS:

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1. THODUPUZHA URBAN CO-OPERATIVE BANK LTD.394, THODUPUZHA, REPRESENTED BY ITS GENERAL MANAGER.

2. SPECIAL SALE OFFICER,
THODUPUZHA URBAN BANK (GROUP), OFFICE OF THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), THODUPUZHA.

3. SHIBU RAGHAVAN,
KANJIRAKKAT HOUSE, ODIYAPARA,
VANNAPPURAM VILLAGE, THODUPUZHA.

BY ADV. SRI.K.K.CHANDRAN PILLAI
SRI.A.S.SAJUSH PAUL
SRI.ALEXANDER JOSEPH
BY ADV.SRI.V.G.ARUN.
BY SR.GOVT.PLEADER SRI.P.K.RAVIKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP(C) NO.31427 OF 2006)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of Patta dated 30.11.2000 issued by the Special Tahsildar (Land Assignment), Kothamangalam.

Ext.P2: Copy of the petition dtd.23.4.2005 submitted by the petitioner before the Deputy Superintendent of Police, Thodupuzha.

Ext.P3: Copy of Award dtd.6.1.2006 in ARC No.5409/2005 passed by the Assistant Registrar of Co-operative Societies (General), Thodupuzha.

Ext.P4: Copy of auction notice dtd.nil issued by the 2nd respondent to the petitioner.

FIRST RESPONDENT'S EXHIBITS:

Ext.R1(a): Copy of the bond dtd.20.11.2004 executed by the petitioner to the 1st respondent.

Ext.R2(b): Copy of the auction sale notice dtd.20.10.2006 issued by R2.

THIRD RESPONDENT'S EXHIBITS:

Ext.R3(a): Copy of the auction notice published by R1 dtd.24.11.2006.

-True Copy-

P.A.to Judge.

S. SIRI JAGAN, J.

WP(C) NO. 31427 OF 2006 N

Dated this the 15th day of March, 2007

J U D G M E N T

Petitioner claims to be a surety for loan amounts taken by the third respondent for which he has mortgaged the property covered by Ext.P1 as security to the first respondent-Bank. Now, the first respondent has initiated proceedings for coercive recovery of the loan amounts by proceeding against the mortgaged property. The same is under challenge in this writ petition. According to the petitioner, since he is only a surety for the loan availed of by the third respondent, the first respondent- Bank ought to have proceeded first against the property belonging to the third respondent which also has been mortgaged with the first respondent-Bank.

2. The third respondent has filed a detailed counter affidavit in which he has disputed the claim of the petitioner that he is only a surety. According to him, although the loan was availed of in the name of the third respondent, more than half of the said amount was given to the petitioner and in fact, the arrangement between the petitioner and the third

respondent was that the petitioner would pay the amount received by him with interest. In the above circumstances, the third respondent contends that the petitioner as well as the third respondent are jointly and severally liable to repay the amount and therefore, there is no illegality in proceeding against the properties of both the petitioner and the third respondent simultaneously.

3. Petitioner strongly disputes the contentions raised by the third respondent in the counter affidavit. In fact, he seeks time to file a reply affidavit to controvert the statements in the counter affidavit filed by the third respondent. But, I am not inclined to entertain this writ petition any further, for settling the disputes between the petitioner and the third respondent, in so far as the forum for settling such disputes is not this Court under Article 226 of the Constitution of India. Admittedly, the amounts are due from the third respondent as repayment of loan for which the petitioner is a surety. That being so, the petitioner and the third respondent both are jointly and severally liable to pay the amount. Therefore, there is nothing illegal in the first

respondent-Bank in proceeding against both the properties or properties of any one of them, one after the other. If the petitioner wants to settle any dispute between himself and the third respondent, his remedy lies elsewhere. Therefore, without prejudice to the right of the petitioner to initiate appropriate proceedings for settling the dispute between himself and the third respondent, this writ petition is dismissed.

S. SIRI JAGAN,
Judge

Mbs/

K.THANKAPPAN, J

Crl.Appeal NO. OF 2001

J U D G M E N T

DATED:13-02-2007